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Workmen's Compensation—Reimbursement From Special Fund

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The court's rationale in the instant case seems to have been based on the prevalence of silicosis in certain types of industry⁵⁵ and the difficulties of diagnosis as totally disabling.⁵⁶ The decision is commendable in the light of the necessity for most liberal construction of Workmen's Compensation Law in this difficult area of dust diseases,⁵⁷ and the result is merely that the industry which creates this specific hazard will be required to compensate for its injuries.

Reimbursement From Special Fund

In *Mastrodonato v. Pfandler Co.*,⁵⁸ the court was called upon to construe Workmen's Compensation Law §15, subd. 8, par. (d).⁵⁹ Claimant, a veteran, was partially disabled from war injuries, and a subsequent injury in the course of his employment caused a permanent disability. Appellants, the employer and its insurance carrier, filed an application for reimbursement from the special disability fund for medical expenses only, since compensation payments had ceased before the end of the 104 week period and claimant had returned to work.

The court unanimously reversed the Appellate Division⁶⁰ and the Workmen's Compensation Board, holding that medical disability payments unaccompanied by compensation payments can be reimbursed out of the special fund. The intent of the Legislature in enacting this provision was to remove as far as practicable the reluctance of employers to hire partially disabled persons.⁶¹ To accomplish this result, it thus is inconceivable that the Legislature, by using the words "compensation and medical benefits," could mean that both must be present as a condition precedent for reimbursement, since either alone if non-compensable would be a deterrent to employment.

The contention that "disability" as used in this section means a wage earning diminution is likewise rejected by the court. Although generally this is true, it may

55. See Governor Dewey's Message, N. Y. Legis. Ann., p. 211 (1947).

56. See note 51, *supra*.

57. *Nigahosian v. Daub & Co.*, 275 App. Div. 463, 90 N. Y. S. 2d 562, *appeal and reargument denied*, 275 App. Div. 1005, 88 N. Y. S. 2d 672 (3rd Dep't 1949).

58. 307 N. Y. 592, 123 N. E. 2d 83 (1954).

59. "If an employee . . . (having a) physical impairment incurs a subsequent disability by accident arising out of and in the course of employment . . . resulting in a permanent disability caused by both conditions that is substantially worse than that which would have resulted from the subsequent injury . . . alone, . . . such employer or his insurance carrier . . . shall be reimbursed from the special disability fund created by this subdivision for all *compensation and medical benefits* subsequent to those payable for the first one hundred four weeks of disability." [Italics supplied.]

60. 283 App. Div. 752, 128 N. Y. S. 2d 164 (3rd Dep't 1954).

61. Workmen's Compensation Law §15, subd. 8, par. (a).

also refer to medical impairment alone.⁶² The court's conclusion is a logical resolution of conflicting statutory language, and it follows the general policy of liberal construction of the Workmen's Compensation Act to avoid exemptions and exceptions.⁶³

Educational Corporation Employees

In *Knapp v. Syracuse University*,⁶⁴ claimant was employed as a painter in an office building owned by Syracuse University but not used for any educational function, and he sought an award for disability benefits under the Workmen's Compensation Law for disability outside the employment.

The Court *held* (4-3), reversing the Appellate Division⁶⁵ and the Workmen's Compensation Board, that employees of educational institutions are excluded from coverage under this section regardless of the type of duties performed.

Judge Desmond writing for the majority contends that by Workmen's Compensation Law § 203, a claimant must prove he is an employee in the employment of a covered employer to receive a disability award, but Workmen's Compensation Law § 201, subd. 6,⁶⁶ specifically excludes services performed for any educational corporation as "employment" under this article. By way of analogy, the Court notes that whatever the Legislature has deemed it advisable to make a distinction between educational and non-educational employees of an educational corporation, they have used clear language to this effect.⁶⁷ Therefore, they conclude that any inequities in this article should be left for Legislative amendment rather than judicial interpretation.⁶⁸

The dissent by Judge Fuld points out that Workmen's Compensation Law § 201, subd. 4,⁶⁹ defining employer does not exclude educational corporations.

62. *Schwick v. Bayer Company*, 272 N. Y. 217, 5 N. E. 2d 713 (1936).

63. *People, on Complaint of Cohen, v. Levine*, 160 Misc. 181, 288 N. Y. Supp. 476 (N. Y. County 1936).

64. 308 N. Y. 274, 125 N. E. 2d 425 (1955).

65. 284 App. Div. 184, 130 N. Y. S. 2d 529 (3rd Dep't 1954).

66. "Employment means employment in any trade, business or occupation carried on by an employer, except . . . the following . . . : services performed for a . . . fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes."

67. Workmen's Compensation Law, 3, subd. 1, group 18; Labor Law §715.

68. *Rossomanno v. Leon Decorating Co.*, 306 N. Y. 521, 119 N. E. 2d 367 (1954).

69. "Employer, except when otherwise stated, means a person, partnership, association, corporation, legal representative of a deceased employee . . . who has persons in employment as defined in subd. 6 of the section but does not include the state, a municipal corporation, local governmental agency, other political subdivisions or public authority."